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Supreme Court of the United States.

OCTOBER TERM, 1930.

No. 113

THE POTTSTOWN IRON COMPANY, PETITIONER,

v.

THE UNITED STATES.

BRIEF FOR THE PETITIONER.

PAUL F. MYERS,
JOHN R. YATES,
Attorneys for Petitioner.

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THE POTTSTOWN IRON COMPANY, PETITIONER,

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THE UNITED STATES.

BRIEF FOR THE PETITIONER.

I.

THE OPINION OF THE COURT BELOW.

The opinion of the Court of Claims in this case, as originally rendered, is reported in 40 Federal Reporter (2d series) page 142. The special Findings of Fact and Opinion, as amended by order of the Court of Claims dated April 21st, 1930, appear at pages 14 to 23 in the record.

II.

STATEMENT OF THE CASE.

The Commissioner of Internal Revenue, upon final audit of the petitioner's income and excess profits tax returns for the calendar years 1916 to 1920, inclusive, found deficiencies for the calendar years 1916 and 1917 in the total amount of $229,719.22, an overassessment of taxes for the calendar year 1918 in the amount of $250,871.34, and overassessments for the calendar years 1919 and 1920 in the amounts of $765.61 and $4,130.87, respectively. (R. 16.)

On January 29th, 1926, the Commissioner signed a schedule of overassessments (Schedule No. IT-A-17941—Form 7805) which included the overassessment for 1918 in the amount of

$250,871.34. This schedule was transmitted to the Collector of Internal Revenue for the first district of Pennsylvania for his action in accordance with the directions appearing thereon. (R. 17.) These directions were in the following language:

"AUTHORIZATION OF COMMISSIONER.

To the Collector 1st District of Pennsylvania.

The amounts listed in column 4 as overassessments (or reductions of tax liability) are hereby approved, and the related claims, if any, allowed in the respective amounts indicated by the 'Certificates of Overassessment' or 'Notices of Adjustment of Claim for Abatement' attached hereto.

You will immediately check such items against the accounts of the several taxpayers, and determine whether the amounts in which the tax liabilities have been reduced should be respectively abated, in whole or in part, and make such abatements as may be warranted by the condition of the taxpayers' accounts for the years involved.

If any part of such item is found to be an overpayment, you will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, making the appropriate entries in your accounts. (This applied only to income, war profits, and excess profits taxes.) Such credits will be entered in column 9, and placed in column 5 of a subsidiary Schedule of Refunds and Credits (Form 7805-A).

The balance, if any, of the overpayment will be entered in column 12, and placed in column 4 of the subsidiary schedule (Form 7805-A) referred to above, and an appropriate memorandum made upon the taxpayer's account.

You will thereupon complete and certify this schedule and the schedule upon Form 7805-A, and return the necessary copies of each to the Commissioner of Internal Revenue.

Date Jan. 29, 1926. Signed—D. H. BLAIR,
Commissioner of Internal Revenue."

This schedule (Form 7805) and subsidiary schedule (Form 7805-A), were attached as exhibits to the Agreed Statement of Facts in the suit in the Court of Claims, and were, by that Court, made a part of the Special Findings of Fact by reference.

(R. 17.) Copies thereof are attached to this brief as an appendix, copies of the original exhibits having been certified as true by the Chief Clerk of the Court of Claims and filed with this Court.

The petitioner, on February 23d, 1926, directed a letter to the Collector relative to the overassessments and deficiencies and the crediting of overpayments against the deficiencies, which letter, so far as material here, was as follows:

> "On December 18, 1925, this Company specifically consented in writing to the immediate assessment of a deficiency in tax of $2,683.29 and $227,035.93 for the years 1916 and 1917, respectively, and specifically acquiesced in writing to the overassessments of $250,871.34 for the year 1918, $765.51 for the year 1919 and $4,130.87 for the year 1920. This acquiescence was specifically confirmed by the Commissioner in Bureau letter of December 31, 1925.
>
> The above additional assessments for 1916 and 1917, were scheduled to your office by the Commissioner in January, 1926, on Special List #12, page 0, lines 3 and 4. The overassessments for the years 1918, 1919 and 1920, were scheduled to your office by the Commissioner in January, 1926, on Schedule #17941." (R. 17, 18.)

On the same date, February 23d, 1926, the Collector wrote the petitioner a letter which, so far as material here, was as follows:

> "You are advised that the overassessments referred to were scheduled to this office by the Commissioner on Schedule 17941 and after examination of the outstanding accounts of this office a portion of the said overassessments which amount to $255,767.82 have been applied to close out the following accounts:
>
> 1916 income tax assessed on January 03-C Special 12, 1926 List in the amount $2,683.29.
>
> 1917 income tax assessed on January 04-C Special 12, 1926 List in the amount $227,035.93,
>
> making a total of $229,719.22.
>
> The crediting and posting of $229,719.22 to the amounts referred to in the above paragraph leave a refund of

$26,048.60 due your company and the postings referred to close outstanding accounts on the records of this office on account of income and profits tax liability of your company for the years 1916 to 1920, inclusive." (R. 17, 18.)

The Collector complied with the directions on Form 7805, and, on February 27th, 1926, signed and certified this schedule of overassessments, and the entries made thereon by him, together with subsidiary schedule, Form 7805-A. The Collector certified that the overassessments for the years mentioned constituted overpayments. (R. 17.) His certificate on Form 7805 was in the following language:

"CERTIFICATE OF COLLECTOR.

To the Commissioner of Internal Revenue:

The items in this schedule have been checked against the accounts of the respective taxpayers concerned and the amounts indicated have been applied as abatements and credits on their accounts.

The amounts of overpayment and the net amounts refundable have been determined to be as indicated herein.
Date 2-27-26

Signed—B. D. McCAUGHN,
Collector 1st District of Pa."

(R. 17. See also appendix to this brief.)

Of the overpayment of $250,871.23 for 1918, $227,035.93 thereof was applied as a credit against the deficiencies for 1916 and 1917, aggregating that amount, and the balance of $21,152.12 was refunded to the petitioner. The overpayments for 1919 and 1920 were also refunded. The authorization of the Commissioner to the Disbursing Clerk of the Treasury Department appearing upon the Schedule of Refunds and Credits, Form 7805-A, was dated April 15th, 1926. Treasury checks for the amounts of the refunds were thereafter mailed to petitioner, together with copies of certificates of overassessment. (R. 17.)

The petitioner has been paid interest on the amounts refunded, but has not been paid interest on that portion of the

1918 overpayment, which was applied as a credit against the 1916 and 1917 deficiencies. (R. 19.)

Under Section 1019 of the Revenue Act of 1924 (43 Stat. 346; U. S. C., Title 26, Sec. 153), interest on credits against additional assessments was payable from the date of the overpayment of tax to the date of the assessment of the additional tax against which credit was applied. The petitioner contended in the Court below that interest on the 1918 overpayment applied as a credit against the 1916 and 1917 deficiencies, should be computed under this section of the Revenue Act of 1924, because it alleged that the credit was taken and became effective prior to February 26, 1926, the date of the enactment of the 1926 Act. (R. 20.)

Section 1116 of the Revenue Act of 1926 (44 Stat. 119; U. S. C., Tit. 26, Sec. 153), which became effective February 26, 1926, changed the situation with reference to the payment of interest upon credits, and, with respect to overpayments and additional assessments for years prior to 1921, provided for the payment of interest, upon overpayments applied as credits, from the date of the overpayment to the due date of the amount against which the credit was taken. By subdivision (c) of section 1116, that section was made applicable to any credit taken after the enactment of the Revenue Act of 1926. The defendant contended that the credits in question were taken subsequent to February 26th, 1926, and that, therefore, the provisions of the 1926 Act with respect to the payment of interest on credits were applicable, and that as the taxes for 1916 and 1917 were due before the overpayment for 1918 was made, no interest was payable on the credits. (R. 20, 21.)

The only issue in this case is as to the date when the credit in question was taken and made effective, the determination of which issue will necessarily determine the provisions of which Revenue Act should be applied in the computation of interest on the credit. The Court of Claims took the position that the credit of the 1918 overpayment against the 1916 and 1917 underpayments was taken and made effective, within the meaning of the statutes, on April 15, 1926, when the Commissioner signed and approved the schedule of refunds and credits

(Form 7805-A) authorizing the disbursing clerk of the Treasury Department to issue checks in accordance with such schedule. (R. 21.)

III.

STATUTES INVOLVED.

Revised Statutes, Sec. 3218 (U. S. C., Title 26, Sec. 147):

> Every collector shall be charged with the whole amount of taxes, whether contained in lists transmitted to him by the Commissioner of Internal Revenue, or by other collectors, or delivered to him by his predecessor in office, and with the additions thereto, with the par value of all stamps deposited with him, and with all moneys collected for penalties, forfeitures, fees, or costs; * * *

Revenue Act of 1924, c. 234, 43 Stat. 296, 301, 346 (U. S. C., Title 26, Secs. 1045, 1046, 1065, 153):

> Sec. 271. As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax.
>
> Sec. 272. If the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the excess shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the excess shall be credited or refunded as provided in section 281.
>
> Sec. 281. (a) Where there has been an overpayment of any income, war-profits, or excess-profits tax imposed by this Act, the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909, the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or any such Act as amended, the amount of such overpayment shall be credited against any income, war-profits, or excess profits tax or installment

thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.

Sec. 1019. Upon the allowance of a credit or refund of any internal revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment, then to the date of the assessment of that amount. The term "additional assessment" as used in this section means a further assessment for a tax of the same character previously paid in part.

Sections 271, 272, and 284(a) of the Revenue Act of 1926 provide substantially the same as Sections 271, 272 and 281(a) of the Revenue Act of 1924, supra. Section 1116 of the 1926 Act provides (44 Stat. 119; U. S. C., Title 26, Sec. 153):

Sec. 1116(a) Upon the allowance of a credit or refund of any internal revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate of 6 per centum per annum from the date such tax, penalty, or sum was paid to the date of the allowance of the refund, or in the case of a credit, to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment made under the Revenue Act of 1921, the Revenue Act of 1924, or this Act, then to the date of the assessment of that amount.

(b) As used in this section—

(1) The term "additional assessment" means a further assessment for a tax of the same character previously paid in part, and includes the assessment of a deficiency under Title II or Title III of the Revenue Act of 1924, or of this Act;

(2) The term "date of the allowance of the refund" means, in the case of any income, war profits, or excess profits tax, the first date on which the Commissioner signs the schedule of overassessments in respect thereof.

(c) This section shall be applicable to any refund paid, and to any credit taken, on or after the date of the enactment of this Act, even though such refund or credit was allowed prior to such date.

IV.

SPECIFICATION OF ERRORS.

(1) The Court of Claims erred in finding and holding that the credit of the 1918 overpayment against the 1916 and 1917 deficiencies was taken and made effective within the meaning of the statutes, on April 15, 1926, the date upon which the Commissioner signed the instructions on the subsidiary schedule (Form 7805-A) authorizing the Disbursing Clerk of the Treasury Department to issue checks in accordance with such schedule.

(2) The Court of Claims further erred in not finding and holding that the credit of the overpayment for 1918 against the deficiencies for 1916 and 1917 was taken and made effective either on January 29th, 1926, the date upon which the Commissioner of Internal Revenue approved the schedule of overassessments including the said 1918 overpayment, or not later than February 23d, 1926, on or before which date the Collector had applied a portion of the overpayment for 1918 to close out the 1916 and 1917 deficiencies and by the appropriate crediting and posting of the overpayments against the deficiencies had closed petitioner's accounts on his records for the years 1916 to 1920, inclusive.

V.

SUMMARY OF ARGUMENT.

The credit of the overpayment for 1918 against the deficiencies for 1916 and 1917, was *allowed* either when the Commissioner, on January 29, 1926, signed the Schedule of Overassessments including the overpayment in question, or not later than February 23, 1926, on or before which date the Collector by his own admission in writing had applied the overpayment as a credit against the deficiencies in the petitioner's accounts in his records, thereby closing the petitioner's accounts for the years 1916 to 1920, inclusive; that said credit was *taken* and made effective either on January 29, 1926, provided this Court finds that the credit was *allowed* on that date, or not later than February 23, 1926, on or before which date the petitioner had received the benefit of the credit in the only accounts which the Bureau of Internal Revenue kept with the petitioner, such credit thereby extinguishing the liability of the petitioner for the deficiencies for the years 1916 and 1917; that the credit having been *taken* and made effective not later than February 23, 1926, the provisions of the Revenue Act of 1924, relative to the payment of interest on credits, which were in effect on February 23, 1926, are applicable.

ARGUMENT.

1. **The credit of the 1918 overpayment against deficiencies for 1916 and 1917 was *allowed* by the Commissioner of Internal Revenue on January 29, 1926, upon which date he signed the "Authorization of Commissioner" on the Schedule of Overassessments, or not later than February 23, 1926, on or before which date the petitioner's deficiencies for 1916 and 1917 had been extinguished by the credit of the 1918 overpayment made by the collector in the petitioner's accounts.**

The United States has consistently taken the position that in the administration of the various revenue laws a credit of an overpayment of tax for one year against a deficiency in tax

for another year is *allowed* when the Commissioner signs the Schedule of Overassessments upon which the overpayment appears, and transmits the same to the Collector for his action thereon in accordance with the instructions printed on Form 7805 (Schedule of Overassessments) under the heading "Authorization of Commissioner." The Government here does not oppose the view that the credit in question was *allowed* by the Commissioner on January 29, 1926, but insists that the said credit was *taken* at some date subsequent to February 26, 1926, the date the 1926 Act became effective. This position with respect to when a credit is *allowed* is taken by the Government in the cases of *United States, Petitioner,* v. *Boston Buick Company,* No. 42; *United States, Petitioner,* v. *Iron Cap Copper Company,* No. 43; and *United States, Petitioner,* v. *Swift and Company,* No. 65, all October Term, 1930. Those cases do not involve the question of when a credit of this nature is *taken,* but only the date upon which the credit in each particular case was *allowed.* The provisions of Section 1116 of the Revenue Act of 1926 make it imperative to consider when a credit is *taken,* in order that there may be a determination of the issue whether the provisions of that Act or of the Revenue Act of 1924, concerning the payment of interest on credits, are applicable.

In the *Boston Buick Company* and *Iron Cap Copper Company* cases, 35 Fed. (2d) 560, which cases were argued together before the Circuit Court of Appeals for the First Circuit, the question before the Court was whether the particular credits of overpayments against the deficiencies were *allowed* prior to or subsequent to the passage of the Revenue Act of 1924. The Court was of the opinion that the time of the allowance of a credit must be the same as that of the allowance of a refund under the decision of the Supreme Court of the United States in the case of *Girard Trust Company* v. *United States,* 270 U. S. 163, 46 S. Ct. 229, 70 L. Ed. 524, which was when the Commissioner or his deputy signed the certificate on Form 7805-A authorizing the Disbursing Clerk of the Treasury Department to pay the refunds disclosed by said schedule. Inasmuch as the Circuit Court of Appeals based its decision largely upon the

language of the opinion of the Supreme Court in the *Girard Trust Company* case, it is deemed advisable to draw particular attention to that case.

A. Girard Trust Company Case.

The facts in that case disclose that on December 9, 1922, a Schedule of Overassessments was signed by the Commissioner on which appeared overassessments of $182,583.72 for the year 1920, and $107,372.36 for the year 1917, in favor of the Girard Trust Company. Upon the receipt of this Schedule, the Collector applied $98,101.29 of the overassessment for the year 1920, as an abatement, credited $21.41 against taxes for other years, and reported $84,416.02 as an excess overpayment after making the said credit. The $107,372.36 for the year 1917, was also reported by the Collector to the Commissioner as an overpayment. The authorization to the Disbursing Clerk of the Treasury Department to pay the amount refundable was signed by the Commissioner on January 16, 1923, the check in payment of the refund was dated February 10, 1923, and was received on February 20, 1923. The Commissioner allowed interest on the refundable portions from the date of payment computed to December 9, 1922, on the theory that the refunds were allowed on the date on which the Commissioner signed the Schedule of Overassessments. (Form 7805.) The Girard Trust Company contended that it was entitled to interest to the date when it received payment of the refunds on the theory that that was the date of the allowance of the refund.

The issue, therefore, was clearly defined between the Company and the Government, and that issue related solely to the interest on the *refunds*. No question was raised as to interest on the $21.40 credited, or as to the date of the allowance of the credit, either before the Court of Claims or before this Court.

This Court in allowing interest to January 16, 1923, the date upon which the Commissioner authorized the Disbursing Clerk to pay the refunds, said (p. 169):

> "If Congress had intended that interest should be allowed to the date of the payment, it seems to us it would have said so. Allowance in its ordinary sense does not mean payment, and in the practical administration of the Treasury Department the two things are quite different. The one is a decision by the competent authority that the payment should be made. The other is the actual payment. The Commissioner of Internal Revenue is the final judge in the administrative branch of the Government to decide that an overassessment has been made and that a refund or credit should be granted, and when he has made that decision finally, he has allowed the claim for the refund or credit of the taxes paid within the meaning of the section."

The Court stated that the particular statute should be construed in the light of the difficulties of Government bookkeeping and accounting. And with respect to the date of final allowance of the refund the Court said (p. 170):

> "Nor does the fact that, pending the carrying out of the direction of the Commissioner of Internal Revenue to make the refund, he might reverse himself, change the finality of his decision allowing the refund. If he does so, the date fixed as the date of the allowance under the section is changed of course, but the mere fact that he can reverse a final allowance does not prevent its being a final allowance, any more than when a court renders a judgment, its ability within the term to set it aside or change it affects its finality, if it is not changed."

And further on in its opinion the Court states (p. 171):

> "The findings and the exhibits show that the course of business is that the Collector on receiving from the Commissioner the schedule as to the overassessment, examines his books and reports back to the Bureau the amount which should be credited on taxes due and the amount to be refunded, that this is examined by the Assistant Commissioner and then is delivered to the Commissioner, who makes it effective by his approval. Until it reaches him and is approved by him, the refund can not be paid. This we think is the real date of allowance. Until that time,

> the exact amount of the refund is not fixed finally by competent authority. This date would seem to be just as certain and convenient from an administrative standpoint as that of the original decision of the Commissioner, and it is certainly more in conformity to the general purpose of Congress to relieve the overassessed taxpayer by paying compensatory interest on money unjustly taken and kept by the Government."

The decision of this Court in the *Girard Trust Company* case would appear to make necessary, in the case of the allowance of a credit, a decision by competent authority that a credit should be given, to be followed by steps necessary to make the credit effective. The opinion further states that the particular statute providing for the payment of interest should be construed in the light of the difficulties of Government bookkeeping and accounting. The case can not be said to have decided the question of when a credit is allowed, for that question was not before the Court.

In the case of a refund the natural sequence is for the refund to be allowed by competent authority, this to be followed by actual payment of the refund. The same sequence should be maintained in the case of a credit,—that is, the credit should be *allowed* by competent authority before the credit is *taken* or made effective; or at least the *allowance* and the *taking* of the credit should be simultaneous. A situation certainly should be avoided where a credit could be *taken* and the benefit thereof received by the taxpayer before the credit is finally *allowed* by competent authority. Yet such a situation might be created if this Court should hold that a credit is allowed when the Commissioner finally signs the Schedule of Refunds and Credits (Form 7805-A) authorizing the Disbursing Clerk to pay the refunds disclosed by said schedule.

In the *Girard Trust Company* case the Court stated that "allowance in its ordinary sense does not mean payment, and in the practical administration of the Treasury Department the two things are quite different." The Court, of course, was speaking of the allowance of a refund, but there is no reason

why the same language should not be applicable to the allowance of a credit. Therefore, the allowance of a credit in its ordinary sense does not mean the making effective of the credit by a book entry equivalent to the payment of the amount credited. If the entries made by the Collector on the petitioner's accounts giving the petitioner the benefit of the credit makes effective the credit, this is analogous to the payment of a refund by the Disbursing Clerk, and both of such acts must necessarily have been preceded by the *allowance* of the credit or refund.

This Court, in that case, in fixing the date of the allowance of the refund, stated that the date upon which the Commissioner finally advises the Disbursing Clerk to pay the refund "would seem to be just as certain and convenient from an administrative standpoint as that of the original decision of the Commissioner." This would not be true in the case of a credit for in view of the difference in the procedure of the Treasury Department in cases of credits and refunds, it is not convenient from an administrative standpoint to fix the allowance date of the credit as the date upon which the Commissioner authorizes the Disbursing Clerk to pay the refund shown in the schedule.

B. Differences in Refunds and Credits and Departmental Procedure thereon.

There are at least three ways in which a taxpayer may receive the benefit of an overassessment of tax. If the tax which is found to be overassessed, has been assessed but not paid, there can be an abatement of the assessment. If the overassessment for one year is offset by deficiencies for other years, there can be a credit of the overpayment against the deficiencies for other years. Lastly, if the overassessment is an overpayment of tax and there are no outstanding deficiencies in tax for other years, the overpayment can be refunded to the taxpayer in cash.

We are not here concerned with abatements, but submit that there are important differences in the procedure on refunds and

credits which should be specifically called to the attention of this Court. From the record in this case as well as other cases before this Court, it appears that when the Commissioner of Internal Revenue finds that a taxpayer has been overassessed, the overassessments are entered on a Schedule of Overassessments (Form 7805), the Commissioner signs this Schedule and then sends the same to the Collector for the district in which the taxpayer has filed his return, with certain instructions on said Schedule, under the heading "Authorization of Commissioner," as to the disposition which the Collector shall make of said overassessments. If the Court will turn to the appendix of this brief and observe the Schedule contained therein, it will be noted that the Commissioner advises the Collector that the "overassessments are hereby approved and the related claims, if any, allowed in the respective amounts indicated by the 'certificates of overassessments' * * *." The Collector is authorized and directed to "check such items against the accounts of the several taxpayers * * *"; that if any part of any such item is found to be an overpayment, the Collector is directed to "examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, making the appropriate entries in his accounts." The Collector is then directed to enter such credits in Column 9 of the Schedule and place the same in Column 5 of a subsidiary Schedule (7805-A), and he is further instructed to enter the balance of the overpayment in Column 12 showing the net amount refundable to the taxpayer, which amount is carried to Column 4 of the Subsidiary Schedule (7805-A).

As in the case of a refund, the "competent authority" who allows a credit is the Commissioner of Internal Revenue. This particular act calls for discretionary powers, but the mere ministerial duty of making the credit of the overpayment on the taxpayer's account in the Collector's office can certainly be delegated to one of his subordinates just as effectively as he can delegate to the Disbursing Clerk the ministerial act of paying the refund.

The Commissioner's authorization to the Collector advises him that the overpayments are approved and the claims for

refund or credit allowed, and he therein instructs the Collector to make the necessary entries on the taxpayer's account to make effective the credit and give the taxpayer the benefit thereof in dollars and cents. With respect to the amount of overpayments which are refundable in cash, such amount, it is true, is not known to the Commissioner until the Collector has certified the Schedules back to the Commissioner showing the refundable portion of the overpayment. The Commissioner then, with respect to the refunds, exercises a further duty involving discretion when he approves the said refunds for payment and directs the Disbursing Clerk to make payment thereof. However, with respect to the credits, he has performed, at the time of signing the Schedule of Overassessments and transmitting the same to the Collector, his final duties involving discretionary powers, and he gives just as much authority to the Collector to make effective the necessary credits as he later gives to the Disbursing Clerk to make the necessary refunds. If there is interest payable on the said credits, the Commissioner directs the Disbursing Clerk to pay this interest, but his official acts with respect to the principal of the credit are ended when he first signs the Schedule of Overassessment.

The Government in its brief in support of the petition for certiorari in the *Boston Buick Company* and *Iron Cap Copper Company* cases, has very clearly set forth its opinion as to the effect of the instructions of the Commissioner to the Collector and the execution by the Collector of said instructions. We quote from the said brief (pages 21 and 22):

> "It is submitted that these instructions constitute a positive order to make the credit and reduce the tax liability. It is true that the Commissioner does not name the specific amount to be credited but he directs the Collector to examine the accounts, to ascertain the amount of taxes due, and to apply the credit to the extent that it is necessary to discharge the liability. The Collector has no discretion except to act as the Commissioner directs and as the state of the accounts warrants.
>
> "If this be not the allowance of a credit it is difficult to see what language the Commissioner could use for his

directions to constitute the allowance of a credit. To hold that this authorization by the Commissioner does not constitute an allowance of a credit is to hold that a taxpayer's tax liability may be discharged without the credit having been allowed by any authority.

"When the Commissioner directs the Collector to ascertain whether any portion of the overassessment constitutes an overpayment and to apply the overpayment as a credit, he has made a final decision as to the disposition of the overpayment by way of credit and he never thereafter, either in a certificate of any kind or in a communication to the Collector, directs an allowance of a credit or refers to the allowance of a credit."

When the Collector has made the necessary entries on the taxpayer's accounts to give the taxpayer the benefit of the credits, he returns this Schedule (Form 7805) to the Commissioner, and his certificate appearing on the face thereof, addressed to the Commissioner, states that the items in the Schedule *have been* checked against the accounts of the respective taxpayers concerned and the amounts indicated *have been* applied as abatements and credits on their accounts. This certificate does not state that the Collector *will* make the necessary entries effectuating the credits at some later date should the Commissioner finally approve the Collector's action, but states that he has already made the necessary entries to apply the overpayments as credits or abatements on the taxpayer's accounts. In doing so he was obeying and carrying out the Commissioner's instructions to him.

The effect of his action in so making effective the credits of the overpayments against any deficiencies for other years, is to absolutely extinguish in whole or in part the taxpayer's liability for the said deficiencies. The only way in which the said deficiencies could thereafter be collected from the taxpayer is by a further assessment by the Commissioner.

We desire to again quote at some length from the Government's brief in support of its petition for certiorari in the *Boston Buick* and *Iron Cap Copper* cases, inasmuch as the reasons why the credit should be held to be allowed on the date the Com-

missioner signs the Schedule of Overassessments and transmits same to the Collector are very clearly and forcefully advanced (see pages 23 to 26 of the said brief):

> "It further appears from the exhibits that, in accordance with the practice then in effect, upon the return of the schedules the Deputy Commissioner certified to the Commissioner the refundable portions of the overassessments and the accrued interest. His certificate made no reference whatever to the amount of the abatements or to the amounts credited.
>
> "Nor did the certificate subsequently signed by the Commissioner contain any reference to credits. This certificate was no more than an authorization to the Disbursing Clerk of the Treasury to pay to the taxpayers entitled thereto the refunds and interest due. The certificate is not directed to the Collector, nor to the taxpayer, nor to any one who might be concerned directly or indirectly in the *credit* in question. It refers neither directly nor indirectly to a credit. As a matter of fact, the Collector was never notified of the signing of the certificate on Form 7805-A by the Commissioner and he took no further action after the Commissioner signed it. Comparing the certificate of the Commissioner, directed to the Collector, which appears on the Schedule of Overassessments, Form 7805, with the certificate of the Commissioner directed to the Disbursing Clerk of the Treasury, which appears on the Schedule of Refunds and Credits, Form 7805-A, it is submitted that the credit was allowed in the certificate to the Collector and not in the authorization to the Disbursing Clerk of the Treasury.
>
> "This view finds further support when consideration is given to procedure in the Income Tax Unit and to the consequences which would flow from the adoption of the rule that a credit is not allowed until Form 7805-A is signed by the Commissioner.
>
> "The most obvious difficulty arises from the fact that under the procedure in effect when these credits were allowed the Commissioner did not in every case sign Form 7805-A. In any case where Form 7805 was returned from the Collector with the statement that there were no items refundable and no interest was to be paid on credits, the schedule was filed without being signed by the Commissioner. (Iron Cap Copper case, R. 35.)

"Moreover, under the procedure which existed prior to the time that interest was allowed on credits, that is, prior to the passage of the Revenue Act of 1921, on November 23, 1921, credits were not listed on the subsidiary schedule, and the instructions to the Collector directed him to prepare a schedule of refunds only in cases where there were refunds. (Iron Cap Copper case, R. 28–31.) At the present time and in fact since January, 1927, Form 7920 has superseded Forms 7805 and 7805-A. Under the procedure governing the use of that form, the Commissioner makes only one certification. This certification contains instructions to the Collector practically identical with those on Form 7805, to which are added the following instructions (Iron Cap Copper case, R. 37):

> 'The DEPUTY COMMISSIONER of Internal Revenue will compute the interest payable, list the same in column 8, and enter the respective total amounts payable in column 9 or 10, or both.
>
> The DISBURSING CLERK, Treasury Department, is authorized to pay the amounts specified in column 9 or 10, or both.'

"It is thus apparent that the Circuit Court of Appeals in these cases has adopted a rule for the computation of interest which can not uniformly be applied without reaching the conclusion that credits totalling millions of dollars have been allowed without authority either because they were allowed after the statute of limitations had expired or because the Commissioner never in fact signed the subsidiary schedule of refunds and credits.

"The Bureau of Internal Revenue has consistently taken the position that a credit is allowed when the Commissioner of Internal Revenue signs the schedule of overassessments except during the period when Treasury Decision 3850, Cumulative Bulletin V-1, p. 354, was in effect. This decision which published the *Girard Trust Co.* decision with head notes indicating that it was applicable to credits as well as to refunds, was approved April 8, 1926, but was revoked by Treasury Decision 3919, approved August 25, 1926, Cumulative Bulletin V-2, p. 209. The rule that a credit is allowed when the schedule of overassessments is approved by the Commissioner is a rule which can be applied uniformly and is adapted to the

> Treasury Department's system of bookkeeping. Under the Revenue Act of 1926, by express enactment refunds are regarded as allowed on the date when the certificate of overassessment is signed. (Sec. 1116(b) (2) of the Revenue Act of 1926, c. 27, 44 Stat. 9, 119; U. S. C. App. Title 26, Sec. 153.)"

We submit that the decision of this Court in the *Girard Trust Company* case can not be said to fix the date upon which a credit is *allowed* because this Court was not called upon to decide that issue in that case; that the very important and material differences in the procedure of the Treasury Department in cases of refunds and credits heretofore pointed out makes the conclusion inevitable that a credit is *allowed* at a different time than a refund is *allowed* under the *Girard Trust Company* decision; and that all the facts pertaining to the allowance of the credit would tend to fix the date upon which the Commissioner signs the Schedule of Overassessments (Form 7805) and transmits the same to the Collector for action thereon in accordance with his instructions as the true date upon which the credit is allowed.

It seems to the petitioner that the only fact which can in any way argue against the fixing of this date as the date of allowance, is that the amount of the credit to be applied is unknown to the Commissioner when he first signs the Schedule of Overassessments. But we deem this immaterial inasmuch as the Commissioner does not have the means at hand to ascertain this fact as the taxpayer's accounts are kept by the various Collectors in the field, and the Collector must necessarily be the one to ascertain this fact. But when he does ascertain it, he already has received the authority from the Commissioner to make the credit effective by appropriate entries on the taxpayer's accounts, and once he has done so, the credit is just as effectively given and taken as a refund is paid when the Disbursing Clerk mails the check to the taxpayer. If the allowance of the credit is postponed until the credit is actually taken and made effective, it surely must be allowed when the Collector, performing a ministerial act under direction of his superior, the Commissioner, gives the taxpayer the benefit of

the credit in dollars and cents by appropriate entries in the taxpayer's accounts extinguishing liabilities for deficiencies for other taxable periods. In the instant case this was done on or before February 23, 1926, and the petitioner so advised in writing by the Collector.

We respectfully submit that if the credit can not be said to have been finally *allowed* on January 29, 1926, it was *allowed* on or before February 23, 1926.

2. The credit in question was *taken* not later than February 23, 1926.

It is necessary in this case for the Court to reach a decision as to when the credit of the 1918 overpayment against the 1916 and 1917 deficiencies was *taken* as well as *allowed*, in view of the provisions of Subsection (c) of Section 1116 of the Revenue Act of 1926, which reads as follows:

> "This section shall be applicable to any refund paid, and to any credit taken, on or after the date of enactment of this Act, even though such refund or credit was allowed prior to such date."

The Revenue Act of 1926 defined the "date of the allowance of the refund" as the first date on which the Commissioner signs the Schedule of Overassessments in respect thereof. A case is possible, therefore, where a refund would be allowed under this definition prior to the passage of the 1926 Act, and payment of the refund would be made at a date subsequent to the passage of the Act. In such a case the provisions of Section 1116 pertaining to the computation of interest on the refund would be clearly applicable in view of the provisions of Subsection (c).

The 1926 Act did not attempt to define the "date of the allowance of a credit." A definition of when a credit is allowed was probably omitted because the Commissioner of Internal Revenue had always taken the position that a credit was allowed when the Commissioner first signs the Schedule of

Overassessments, and there was no decided case upsetting this position of the Commissioner, as was a fact in the case of a refund (*Girard Trust Company* case).

In view of the provisions of Subdivision (c) above quoted it would seem that a credit was intended by Congress to be *allowed* at a date preceding the date the credit is *taken*, just as a refund is allowed on some date preceding its payment. The intention of Congress with respect to the date upon which the credit is allowed or taken can not be ascertained from the provisions of the Act itself, and there is nothing in the Congressional Committee Reports or debates in Congress which throw light upon this intention. In order, therefore, for a just decision to be reached as to when a credit is *taken*, there must be an application of common business sense, giving due regard to the methods of bookkeeping used by the Commissioner of Internal Revenue, his procedure in connection with the allowance and making effective credits of overpayments against deficiencies in tax, and the uniform practice in the Treasury Department concerning the making effective credits of this nature.

Webster defines credit, used in its sense of a noun for bookkeeping purposes, as "acknowledgment of payment by entering in an account." In ordinary business transactions from day to day in which persons incur liabilities to others, which liabilities are carried in open accounts against the debtors, there is a certain moment when the debtor receives a credit on account of payments made by him in partial or whole satisfaction of the liability. It may be that the debtor is returning certain goods which he has purchased and for which he is to receive credit on his account. We submit that the credit received by the debtor on account of the payment made by him, or the return of the goods purchased, becomes effective at one particular moment, and that moment is when the debtor has received the benefit of the said credit by an entry made in his account extinguishing his liability to his creditor in whole or in part.

So, in the case under consideration, the credit given by the Collector to the taxpayer on the taxpayer's accounts was, we submit, *taken* and made effective when the taxpayer had received the benefit of the credit in dollars and cents and had been

notified by the Collector that the deficiencies against which the credit was applied were extinguished. Under the Revised Statutes (Section 3218) every Collector is charged with the whole amount of taxes. He was responsible for the collection of the deficiencies for 1916 and 1917, and was authorized by the Commissioner to extinguish those liabilities by an appropriate credit of the overpayment against them. If the Collector, by his entries in the taxpayer's accounts, could not, under the statute, make the said credit effective, would it have been possible for the Collector to extinguish the taxpayer's liability for the deficiencies for other years before the said credit had been made effective?

The Commissioner is the proper official to allow a credit under the statute, and is undoubtedly also the proper official to make effective the credit by appropriate action on the part of himself or his subordinates. We can think of no reason why he can not delegate to a subordinate the ministerial duty of making effective the credit by appropriate entries in a taxpayer's account. He delegates to the Disbursing Clerk of the Treasury Department authority to pay a refund of tax in cash, and, after all, a credit is a form of repayment of an overassessment of tax. As heretofore pointed out, the Commissioner, after approving the overassessments and authorizing the Collector to make effective the credits, takes no further action with respect to the amount of the overassessments applied as credits excepting to authorize the Disbursing Clerk to pay whatever interest is due to the taxpayer on the said credits. This, however, is in the nature of a cash refund and it is, accordingly, necessary for the Commissioner to take some further action with respect to this cash outlay. In so far as the principal of the tax applied as a credit is concerned, the Commissioner's action with respect thereto has terminated when he authorizes the Collector to make effective the credit, and the Collector, when he makes the appropriate entries in the taxpayer's accounts, has thereby terminated his action in respect thereto except to report back to the Commissioner what he has done. Thereafter, the only action which the Commissioner or Collector takes is to send to the taxpayer the Certificates of Over-

assessment showing how the overassessments have been applied, and we submit that this is no more than a memorandum of information advising the taxpayer as to the credits which have been made by the Collector in the taxpayer's accounts, pursuant to the Commissioner's instructions. As pointed out in the Government's brief in the *Boston Buick Company* and *Iron Cap Copper Company* cases, where it appears that the schedule shows no refundable tax and no interest to be paid on the credits, the Commissioner does not sign the certificate on the Schedule of Refunds and Credits (Form 7805-A), and the Schedule is filed away without further action thereon by the Commissioner. It is apparent, therefore, that the date of the signing of this certificate to the Disbursing Clerk would not be a convenient date with respect to the allowance or taking of credits in so far as the actual administration of the tax laws by the Treasury Department is concerned.

In the Court below the Government contended that a credit is allowed by the Government, but that the credit is taken by the taxpayer; that the taxpayer may either accept the allowance of the Commissioner or he may protest it and refuse and contest the allowance of the credit, its application and the amount of the refund; that when the taxpayer receives the treasury checks accompanied by the Certificates of Overassessment, together with checks for the amount of the refund, he thereupon takes credit if he does not protest or contest the action of the Commissioner. The Government's further contentions, as set forth in its brief below, follow:

> "It is the contention of the Government that any act of an employee in the office of the Collector making entries in the books of the Collector with reference to credits and abatements with a result disclosing the amount to be refunded does not become final. In other words, it does not become the act of the Collector until the final schedule is prepared and he affixes his name to the schedule. At any time prior to that date it is within his power to make such changes and alterations on his books and records as the conditions warrant. This position was taken by the Supreme Court in Girard Trust Company *v.* United States,

270 U. S. 163, where the court held that until the Commissioner affixed his name to the refund schedule it was within his power to make such changes relative to the refunds as the facts and the situation might warrant but that when he affixed his name to the refund schedule he thereupon allowed the refund. By the same process of reasoning, if the Collector be the one who gives the credit to the taxpayer, he can not and does not give it until he affixes his name to the subsidiary schedule which, in this case, he did on February 27, 1926. The rule which plaintiff seeks to establish that the date of a taking of a credit is the date the entries are made in the Collector's books is a dangerous one and one which is not justified in any sense. The date of the act of any employee making entries in the books of the Collector would be impossible proof. The act might be erroneous and might be subject to modification; therefore, it must be held that the act of a Commissioner or of a Collector is official when either affixes his name to the particular document indicating his official action. Therefore, on the basis of plaintiff's contention, the credit was not and could not be taken until February 27, 1926, when the Collector signed the subsidiary schedule."

The petitioner argued in the Court below that the credit in question was taken not later than February 23, 1926, because the Collector, by his own admission in writing, had made the appropriate entries in the petitioner's accounts in his records to make effective the said credit by extinguishing liabilities for other years.

The Court of Claims disposed of the contentions of the petitioner and the Government in the following language (R. 21):

"The statute does not make the taking of a credit dependent upon advice from the taxpayer to the collector as to its position with reference to the deficiencies and overassessments, nor upon advice from the collector as to what entries he has made upon his record. Neither does the statute suspend the effective date of a credit until the taxpayer has received the checks for the refund of tax together with interest, if any, and the certificates of overassessment from the Commissioner through the Collector. The position of the plaintiff is that the credit is taken and

made effective under the statute on the date on which the collector makes the entries in his records in the taxpayer's account and that the preparation and certification by the collector of the schedules to the Commissioner, and approval thereof by the Commissioner, are of no significance in connection with the credit. We think there is no merit in this contention."

We agree with the Court of Claims that the statute does not suspend the effective date of a credit until the taxpayer has received the checks for the refund of tax together with interest, if any, and the Certificates of Overassessment from the Commissioner through the Collector.

Apparently the Government's position is based upon a doctrine of notice, under the theory that, before the credit can be said to have been taken under the statute, it is necessary for the taxpayer to know that a credit has been taken or made effective and acquiesced therein. Section 281(a) of the Revenue Act of 1924, and Section 284(a) of the Revenue Act of 1926, are mandatory upon the Commissioner with respect to the application of overpayments of taxes for one year against deficiencies for other years. See *Peerless Paper Box Mfg. Co.* v. *Routzahn*, 22 Fed. (2d) 459, 460 and *Blair* v. *United States ex rel Union Pac. R. Co.*, Appeals D. C. 6 Fed. (2d) 484. In the latter case the Court said in part:

"The duty imposed upon the respondent, according to the conceded facts in the case, was mandatory, not discretionary; the language of the statute is 'the amount of the excess shall be credited'; the courts therefore have jurisdiction to determine the correct construction of the statute and to compel the respondent to proceed accordingly. * * *"

See also G. C. M. 2455 VI-2 C. B. 107, in which opinion the General Counsel of the Bureau of Internal Revenue stated that the Commissioner is required to make the credit and has no discretion in the matter. A taxpayer has no voice in the matter of whether an overpayment should be applied as a credit against a deficiency, for the Commissioner is bound by the law.

to make such application. The Court of Claims, therefore, very correctly took the view that there was no merit in the Government's contention that the credit was not taken until the Certificates of Overassessment and checks are received by the taxpayer. Even if such notice were held to be necessary, the taxpayer received such notice in the letter of the Collector dated February 23, 1926.

We can see no merit in the Government's contention that because a taxpayer may protest the allowance of the credit, the actual taking of the credit is deferred until such time as he decides not to protest it. In the case of a refund prior to the passage of the 1926 Act, the mere fact that a taxpayer may have protested the allowance of the refund did not defer the date of allowance beyond the date when the Commissioner signed the certificate on the Schedule of Refunds and Credits authorizing the Disbursing Clerk to pay the refunds. We submit that the mailing to the taxpayer of the Certificates of Overassessment constitutes nothing more than a memorandum to the taxpayer advising him how the overassessments have already been applied.

With respect to the Government's contention that the entries in the petitioner's accounts in the books of the Collector does not become the act of the Collector until the final schedule is prepared and he affixes his name to the schedule, this might be true provided there is no evidence in the record to show when the Collector or his employees under his directions actually made the entries in his records. In the instant case the Collector, personally, and in writing, notified the petitioner that the entries had been made in his records and that these entries extinguished the petitioner's liabilities for the deficiencies for 1916 and 1917, and closed the petitioner's accounts for the years 1916 to 1920, inclusive. In the absence of evidence to the contrary, the Commissioner and his subordinates are estopped to deny that the credits were entered in the petitioner's accounts not later than February 23, 1926, and the mere fact that the Collector on February 27, 1926, signed the certificate to the Commissioner on the Schedule of Overassessments showing that he *had made* the necessary entries to

effectuate the credits should have, we submit, no bearing on the issue. As before stated, this certificate to the Commissioner informed the Commissioner that the Collector some time prior to the signing of such certificate *had made* the necessary entries to carry into effect the Commissioner's instructions. That these entries had been made on or before February 23, 1926, must be an acceptable fact for the purpose of deciding this issue in view of the Collector's admission in his communication to the petitioner under date of February 23, 1926, that these entries had been made. If the entries were made by an employee of the Collector they certainly were ratified by the Collector or he would not have advised the petitioner of the making of said entries. The fact that the Collector after making the said entries might have reversed his position prior to certification to the Commissioner that the entries had been made, does not effect the actual taking of the credit when the entries were placed on the petitioner's accounts. We think that this point is decided by the *Girard Trust Company* case, for that case holds that the fact that pending the carrying out of the direction of the Commissioner to make the refund, he might reverse himself and change the finality of his decision allowing the refund does not prevent the allowance being final. If he does so, the date fixed as the date of the allowance is changed of course, but the mere fact that he can reverse a final allowance does not prevent its being a final allowance. There is nothing in the instant case to show that the Collector at any time after making the appropriate entries in his records changed these entries in any respect and in fact his certificate to the Commissioner confirmed the entries which he advised the petitioner on February 23, 1926, had been made.

We agree with the Court of Claims that the "statute does not make the taking of a credit depend upon advice from the taxpayer to the Collector as to its position with reference to the deficiencies and overassessments, nor upon advice from the Collector as to what entries he has made upon his records." We submit that the statute does make the taking of a credit dependent upon the carrying out of all the steps necessary to make effective the said credit, and, irrespective of any advice

from the Collector, these steps are completely carried out when the entries have been made in the petitioner's accounts by the Collector under the authority of the Commissioner, completely extinguishing the petitioner's liability for the deficiencies for other years. It may be that if the Collector had not advised the petitioner that the actual entries had been made in his records to effectuate the credit, the matter of proof as to when the entries were made would be difficult. However, this mere difficulty of proof in the ordinary case should not preclude the petitioner in the instant case from having the benefit of the evidence which is present concerning the time of the making of appropriate entries effectuating the credit, and which evidence has not, in any way, been controverted by the Government.

It is our contention that the Court of Claims has not given the importance to the Collector's letter to the petitioner under date of February 23, 1926, to which it is entitled as evidence in this proceeding. In many instances the Collector advises the taxpayer as to when the entries effectuating the credit have been made in his records, and in this case the fact that he has done so can not be ignored. We believe that the correct decision as to when the credit is made effective is that such credit is taken and made effective by the statute when the evidence shows that the Collector has followed the authorization and instructions of the Commissioner, and in accordance therewith has made the necessary entries in his account with the taxpayer, or, in the absence of such evidence, when he signs the certificate to the Commissioner stating that he had made the necessary entries to put into effect the instructions of the Commissioner to him concerning the application of the overassessments. This would be a rule easy to administer and not in conflict with the decision of this Court in the *Girard Trust Company* case which involved only the date of the allowance of refunds.

The petitioner respectfully insists, therefore, that the credit in question was *taken* and made effective not later than February 23, 1926, at which time the provisions of the Revenue Act of 1924 were in effect, and that, therefore, the provisions

of that Act concerning the computation of interest on the said credit are applicable.

A. Pertinent Court Decisions.

The Court of Claims decided in the cases of *Swift and Company* v. *United States*, 68 Ct. Cl. 97, and *Andrews Steel Company* v. *United States*, Prentice Hall, 1930 Tax Service, Vol.1, page 1377, that a credit of an overpayment against deficiencies is *allowed*, within the meaning of the statutes, when the Commissioner signs the Schedule of Refunds and Credits as reported to him by the Collector, authorizing the Disbursing Clerk to make payment of the refunds shown on that Schedule. That Court also held in the following cases, in addition to the instant case, that the credit was likewise *taken* when the Commissioner signed the authority to the Disbursing Clerk to pay the refunds shown on the Schedule of Refunds and Credits:

West Leechburg Steel Co. v. *United States*, 40 Fed. (2d) 131;
Atlas Powder Co. v. *United States*, 40 Fed. (2d) 136.

The Court of Claims, therefore, does not differentiate between the time of *allowance* of the credit and the time the credit is *taken*, although Section 1116 (c) of the 1926 Act does seem to create some distinction between the *allowance* and the *taking* of the credit.

In the *Swift and Company* case the date of the allowance of the credit was important in a determination of whether a claim for refund was filed within the statutory period. The interest provisions of the statute were not involved in that case. The Court of Claims based its decision chiefly on the decision of this Court in the *Girard Trust Company* case, expressing its opinion that this Court placed credits and refunds on the same footing, so far as the date of allowance is concerned. The Court said in part:

> "The Commissioner 'is the final judge in the administrative branch of the Government to decide * * * that a

> refund or credit should be granted.' No other administrative officer has such authority. The Commissioner's decision that there has been an overassessment is one thing: the determination that there has been an overpayment is quite another. This can not be determined by the Commissioner until he is informed by the collector what part, if any, of the overassessment had been paid, and what part, if any, had been abated. * * *''

The Court, in referring to the decision rendered by the District Court in the *Boston Buick Company* case, *supra*, said:

> "The suggestion of the court to the effect that the date of the entry of the credit by the collector might be considered as the date of the *allowance* of the credit is not sound, for the particular reason that the collector has no authority to *allow* either refunds or credits, that authority being vested in the commissioner, and being judicial in nature, it can not be delegated to the collector."

It is probably true that the Collector, without instructions from the Commissioner, could not finally allow a credit. We do contend, however, that the Commissioner can delegate to the Collector the duty of making effective the said credit by proper book entries, just as effectually as he can delegate to the Disbursing Clerk the duty of making the actual refunds. We submit that the Court of Claims in the *Swift and Company* case, as well as the other cases above mentioned, did not attribute sufficient importance to the very material differences in the nature of the credits and refunds and the Treasury Department procedure thereon, and were too prone to base their decision wholly upon the expression of this Court in the *Girard Trust Company* case, which case it is contended, can not properly be relied upon as authority for when a credit is allowed. We do not take issue with the Court of Claims in its statement that the Commissioner is the final judge to decide that a refund or a credit should be granted, but do contend that once he has made the decision which allowed the overassessment which is to be used as a credit, and instructs the Collector to make effective the credit by the proper entries, he has effectively

allowed the credit, either when he first signs the Schedule of Overassessments, or, at the latest, when the Collector makes the entries necessary to effectuate the credit. The Collector's acts, under the instruction of the Commissioner, are the Commissioner's acts. The principles of agency are clearly applicable, and the Commissioner should be bound by the acts of his agent.

In the *West Leechburg Steel Company* and *Atlas Powder Company* cases, the question was presented to the Court of Claims as to when a credit was *taken*, for in those cases the issues were whether the provisions of the Revenue Act of 1924, or of the Revenue Act of 1926, pertaining to the computation of interest on overpayments applied as credits should govern. The Commissioner signed the certificate on the Schedule of Refunds and Credits authorizing the Disbursing Clerk to pay the refunds prior to the passage of the Revenue Act of 1926, but the Government contended that the provisions of the 1926 Act were applicable because the actual Certificates of Overassessment and checks were not mailed to the taxpayer until after the passage of the 1926 Act. The Court of Claims decided in the petitioner's favor in both cases, holding that the credits were *taken* and made effective by the statute when the Commissioner signed the Schedule of Refunds and Credits authorizing the Disbursing Clerk to pay the refunds that were certified to him by the Collector. The Court stated in the *West Leechburg Steel Company* case:

> "We think a credit is taken within the meaning of the statutes when the Commissioner approves the schedule of refunds and credits certified to him by the collector of internal revenue. Until then the Commissioner has not definitely and finally decided whether any portion of the overassessment shown on the schedule of overassessments is an overpayment or that there should be an abatement or refund made or a credit taken. The determination that there is an overpayment, the decision that a credit should be taken, the determination of the amount, if any, to be refunded and the payment thereof, and the act of abating that portion of the assessment that has not been paid must of necessity occur after the Commissioner has

determined that there has been an overassessment of tax. The statute is mandatory in its requirements that when an overpayment has been determined, all or a portion thereof must be credited against any tax then due. * * * The duty of finally deciding that there has been an overpayment is upon the Commissioner and he can not delegate it. A credit can not be taken until the Commissioner has decided that there has been an overpayment that may be used as a credit. Under the 1924 Act he determined an overpayment when he approved the schedule certified to him by the collector containing the entries showing the payments made by the taxpayer for the year or years for which over-assessments had been determined, and any amounts due by the taxpayer for any other year, together with the amount of the overpayment, if any, for any year that should be credited against an amount due and unpaid for another year. It seems obvious therefore that a credit is taken when the Commissioner approves this schedule. * * *

"We think it is clear that the Commissioner must finally act before a credit is taken. The nature of a credit is not essentially different from a refund except when a credit is taken nothing further remains to be done, and there is no reason for holding that under section 1019 of the Revenue Act of 1924 (26 U. S. C. A. p. 153 note) a credit was taken on a date different from the allowance of a refund under the statute and the decision of the court in Girard Trust Co. et al *v.* United States, supra. Since no one but the Commissioner has authority to allow a refund or credit, his decision that there has been an overassessment, his signing of the schedule of overassessments and forwarding it to the collector for his report as to the amounts, if any, that should be credited or refunded, can not constitute an allowance until some further action by the Commissioner."

And in the *Atlas Powder Company* case, the Court stated in part:

"In the opinion of the court a credit is taken within the meaning of section 1019 of the revenue act of 1924 and section 1116 of the revenue act of 1926 when it has finally been made effective, and that this does not occur until the

> Commissioner of Internal Revenue has finally determined that there has been an overpayment, which can be credited, and has approved the schedules certified to him by the collector of internal revenue. * * *
>
> "The Commissioner is the executive directly in charge of the administrative branch of the Government having to do with the assessment, collection, refund, and crediting of taxes. *Girard Trust Co. et al* v. *United States*, 270 U. S. 163. The collector of internal revenue can not act independently of him in these matters except as to the collection of taxes shown by the taxpayer upon the return and not stayed by the filing of a claim for abatement or otherwise. The signing of the schedule of overassessments by the commissioner in the first instance and the making of a report by the collector to the commissioner as to the status of the taxpayer's accounts are steps preliminary to making a credit effective. In the matter of credits the collector of internal revenue is merely the bookkeeper who reports the condition of the taxpayer's accounts to the Commissioner of Internal Revenue for final action."

We earnestly believe that the Court of Claims in the above cases has taken an erroneous view as to when a credit of this nature is *taken*. That Court has endeavored to place refunds and credits on the same footing and has not given sufficient weight to the important differences between refunds and credits; it has overlooked the clear wording of the Commissioner's authorization to the Collector contained in the Schedule of Overassessments, which authorization is a positive order for the Collector to make the entries necessary to effectuate the credits; and it has also overlooked the fact that when the Collector makes the entries effectuating the credit, the liability for the deficiencies is thereby extinguished. The rule laid down by the Court of Claims would make possible the extinguishment of the liability for the deficiencies before the credit is finally made effective. The Court states that the Commissioner signs the Schedule of Overassessments and forwards it to the Collector for his report as to the amounts, if any, that *should* be credited or refunded. This is not a fact, as the authorization does not ask for a report as to the amounts which should be credited, but specifically and clearly

directs the Collector to credit the taxpayer with the overassessments against any outstanding deficiencies for other years. The Collector in sending the schedule back to the Commissioner does not report to the Commissioner what amount of the overassessments *should* be credited, but states to the Commissioner that the amounts shown in a certain column on the schedule *have been* applied and credited on the taxpayer's accounts in his records. It is a memorandum to the Commissioner of what has been done by the Collector in carrying out the Commissioner's instructions. The Collector does not defer his action with respect to making the credits until the Commissioner finally ratifies and approves whatever action the Collector might have suggested should be taken, but the Collector, acting under the previous instructions from the Commissioner, makes the necessary credits without any further directions from the Commissioner after the schedule has been returned to him by the Collector.

In the above cases, in order for the Court to render judgment for the petitioners, it was not necessary to decide that the credit was allowed and taken upon an earlier date than when the Commissioner signed the certificate authorizing the Disbursing Clerk to pay the refunds. We respectfully submit, however, that in those cases the Court should have rendered an opinion that the credit was *allowed* and *taken* either when the Commissioner first signed the Schedule of Overassessments, or not later than when the evidence in the record showed that the Collector, acting under instructions from the Commissioner, made the necessary entries in the taxpayer's accounts to make the credits effective.

In the *Boston Buick Company* case, *supra*, in which case only the date of the *allowance* of the credit was in issue, the District Court (Judge Brewster), in an opinion reported in 27 Fed. (2d) 395, acknowledged that there are possible grounds for distinguishing between a refund and a credit. He stated:

> "It will be noted that the collector, without further action on the part of the Commissioner, was authorized to enter upon the petitioner's account a credit against out-

> standing taxes due from it. His authority to record this credit was contained in the schedule of overassessments. However, I think, in view of Girard Trust Company *v.* United States, supra, it can be taken as settled that the transmission of the schedule of overassessments does not constitute an allowance of either a credit or a refund. A ministerial act of another administrative officer is necessary before it can be determined that there will be any credit, or before the exact amount of it can be ascertained. In the case at bar, the first administrative act of the collector, with reference to the petitioner's credit, was to ascertain that there had been an overpayment of the tax for the fiscal year 1918, and to apply that overpayment to reduce outstanding taxes due for other years. Until then, to borrow from the language of the Chief Justice in the Girard Trust Company Case, the exact amount of the credit was 'not fixed finally by competent authority.'"

Judge Brewster recognized the merit in the position that the credit was allowed when the Collector made his entries in the taxpayer's account which effectuated the credit, but in order to reach a decision favorable to the taxpayer it was not necessary for him to so hold.

In the case of *Penn Smokeless Coal Company* v. *United States*, decided by the District Court for the Western District of Pennsylvania, 34 Fed. (2d) 205, the Court upheld the Government's contention that the credit of the overpayment against the deficiencies for other years was *allowed* when the Commissioner signed and transmitted to the Collector the Schedule of Overassessments (Form 7805). This decision has not been given much weight as an authority by other Courts called upon to decide this question because of the fact that the Court in the *Penn Smokeless* case misinterpreted a statement taken from the Treasury Department Regulations to be a rule laid down by Mr. Chief Justice Taft in the *Girard Trust Company* case. However, the Court's reasoning upon the question of when the credit was allowed, in view of the procedure in the Treasury Department with respect to credits and refunds, seems to the petitioner to be judicially sound. The Court stated in part:

"When the Commissioner signs and transmits to the collector the schedule of overassessments, he formally allows overassessments, to the respective amounts indicated, in favor of the taxpayers named in the schedule. The schedule is transmitted to the collector in order that he may allocate each overassessment in accordance with the regulations of the Bureau of Internal Revenue, by abating, crediting, or certifying as a refund the amount indicated, as the circumstances may require. The result of the collector's investigation of, and entries upon, the taxpayer's account, is reported to the Commissioner upon the schedule of refunds and credits; but the only order thereafter made by the latter is in connection with the refund. The order for abatement or credit has theretofore been made upon the proper accounting officer, the collector, by means of the schedule of overassessment. True, something remained to be done by the collector before the allowance of credit was fully effected, but so also something remained to be done by the disbursing clerk before the order for refund was fully effected. The order upon the collector for the credit, made in the schedule of overassessments, is just as effective in allowance of the credit as the order upon the disbursing clerk for the payment of the refund from the Treasury; and, prior to the order for the refund, the credit in the instant case had been actually effected."

The opinion of the Court in the *Penn Smokeless Coal Company* case was followed by the District Court for the same District in the case of *Pittsburgh Bridge & Iron Works* v. *United States*, 40 Fed. (2d) 692. The Court in its opinion stated:

"The question whether the act of 1924, or the act of 1926, controls depends upon when the credit was taken in this case. December 11, 1925, the Commissioner made the additional assessment against the plaintiff for the year 1919, in the sum of $31,519.87. December 15, 1925, the Commissioner approved the schedule of overassessments against the plaintiff in the sum of $28,266.40 for the years 1918 and 1920, and transmitted this schedule to the collector of internal revenue at Pittsburgh, with directions as to credits. January 7, 1926, the collector at Pittsburgh returned the schedule, having credited plaintiff with the overpayments against the additional

assessments. February 6, 1926, the Commissioner signed the schedules of refunds and credits and authorized the disbursing clerk of the Treasury Department to issue checks for the amounts to be refunded the taxpayers named thereon. February 10, 1926, the collector at Pittsburgh made a demand on the plaintiff for the balance due after crediting the overpayments, in the sum of $3,253.47. February 20, 1926, plaintiff paid the sum demanded to the collector at Pittsburgh.

The Commissioner had performed every act for payment of interest due the plaintiff under the act of 1924, except the actual mailing of the check and certificate of overassessment. These acts would have been done prior to February 26, 1926, if there had been available funds in the treasury. The credit was not only allowed by the government, but it was also taken by it in so far as it was within its power prior to the passage of the Act of February 26, 1926. If any act was required of the plaintiff in the taking of the credit, it was done by it February 20, 1926, when it paid the collector at Pittsburgh the balance due from the plaintiff after accrediting the overpayments against the additional assessment. This case is ruled by Penn Smokeless Coal Co. *v.* United States (D. C.) 34 F. (2d) 205, wherein an opinion was written by Judge Gibson of this Court."

The Government in another line of cases, endeavored to collect a tax clearly barred by the Statute of Limitations, by crediting against that tax overpayments for other years. In those cases the courts held that such a credit is an erroneous application of the overpayment and that the credit was made effective when the Collector made the necessary entries on the taxpayer's accounts in his records to effectuate the credit. In *Brady* v. *United States*, 24 Fed. (2d) 205, the District Court for the District of Massachusetts held that the tax outlawed by the Statute of Limitations was collected by the bookkeeping entries made by the Collector. The Court stated (page 205):

"In the Brady case a refund owed to a taxpayer was not paid to him, but was credited against an uncollected tax outlawed by the Statute of Limitations then in force. * * *

> "The Brady tax was 'collected' by the bookkeeping entry just as illegally as if there had been a suit or a process of distraint."

And in *Peerless Paper Box Mfg. Co.* v. *Routzahn*, *supra*, decided by the District Court for the Northern District of Ohio, the taxpayer brought suit against the Collector on account of a misapplication of an overpayment of tax against an outlawed tax. The attitude of the Court was that the credit was taken or made effective by the bookkeeping entries of the Collector. Said the Court:

> "* * * The amount of this overassessment was credited and applied by the defendant Collector of Internal Revenue against the second additional assessment of $19,208.60 for the year 1917, on October 23, 1924. * * *"

If the Court had been of the opinion that the credit was not made effective by the book entries of the collector, would it not have held that it would have been improper for the taxpayer to sue the collector on the facts in the case?

In connection with the last two mentioned cases, a situation might arise where the Statute of Limitations with respect to the deficiency tolled between the date on which the Collector made the entries in his records effectuating the credit and the date upon which the Commissioner signed the Schedule of Refunds and Credits authorizing the Disbursing Clerk to pay the refunds or the date upon which the Commissioner mailed the Certificates of Overassessment to the taxpayer. In such a situation the date on which the credit is taken under the Statute would be of vast importance, and we submit that the Government would be the first, in such a situation, to advance the argument that the credit was taken when the Collector made his entries, in order that the deficiency against which the overpayment was applied would not have been outlawed under the statute.

B. The uniform practice in the Treasury Department concerning the effective date of a credit contrasted with the Government's present contentions.

The lower courts have all decided that a credit is taken, within the meaning of the statute, when it is made effective or when it has been allowed. There is a difference of opinion as to the particular time the credit is allowed or made effective. The courts have, however, been unanimous in rejecting the Government's contention that a credit is *taken* when the Commissioner sends to the taxpayer the Certificates of Overassessment and the checks for any refunds which might be due. The Treasury Department in various rulings has consistently taken the position that a credit of an overpayment against a deficiency is made and allowed when the Collector makes the necessary entries to apply the overpayment as a credit, thereby cancelling the deficiency against which the overpayment is applied. If a credit is taken when all of the steps have been carried out to make the credit effective, and the Treasury Department in its rulings has uniformly held that a credit is made when the Collector makes his bookkeeping entries effectuating the credit, we submit that the Government's present position with respect to when a credit is taken is contrary to its uniform practice.

In Appeals and Review Memorandum 46, Cumulative Bulletin No. 2, page 247, the Committee on Appeals and Review stated:

> "Income taxes are assessed for specified periods and may be abated only if illegally or erroneously assessed; that is to say, in ordinary cases if the amount assessed is in excess of the correct amount due from the taxpayer. Manifestly the fact that the taxpayer has overpaid his taxes for a previous year can have no effect upon the amount of tax for which he is liable for a different year. Consequently, prior to the passage of the Act of 1918, when such conditions existed the only course which the office and the taxpayer could pursue was to collect the present amount in full and permit the taxpayer to file a claim for refund of any amount overpaid. Congress,

> recognizing the injustice and hardship frequently involved in such an awkward procedure, provided for crediting the amount of any previous overpayment against the taxes presently due. Such credit, when given, has the force and effect of an order of abatement and wipes out and cancels the assessment *pro tanto*."

As the Collector is charged with the collection of taxes and gives a credit of an overpayment against the deficiency, his entries effectuating the credit "wipes out and cancels the assessment *pro tanto*."

And in Solicitor's Opinion 106, Cumulative Bulletin No. 4, page 339, the Solicitor of Internal Revenue was called upon to decide whether a particular credit was made and allowed prior or subsequent to the expiration of the five year limitation for crediting an overpayment against a deficiency where no claim for credit was filed. The Solicitor, in his Opinion, stated:

> "It is assumed from the reference that the assessment represented by the original letter of advice to the taxpayer was not made. If it was made there would seem no room for doubt, since clearly the credit *was made* when the assessment list went out and any reduction or increase of tax would have to be accomplished by abatement or refund or further assessment.
>
> "The question presented depends for solution upon what constitutes *the making* or allowance of a credit within the meaning of section 252. A statement contained in a letter from the Department to a taxpayer that the taxpayer is entitled to a credit is clearly not a credit actually made or allowed. Something must be done in a formal way that will amount to a direction to the collector who is charged with the collection of internal taxes. Prior to such a direction he has nothing to do with the taxpayer's account since it has not assumed the status of an account stated to him. Such direction by the Commissioner is usually made by formal assessment list signed by him. When such a formal statement or direction to the collector is signed by the Commissioner and forwarded to the collector, showing the amount of the tax to be collected over and above the credit, the Commissioner has

formally *made* or allowed the credit. When this is done the credit has been *made* or allowed, but prior thereto anything that is done in the way of stating the case by employees of the Bureau or in the way of statements to the taxpayer in letters from the Department can be nothing more than preliminary to the actual *making* or allowance of the credit by the Commissioner.

"This is true where credits are considered and passed upon formally by the Commissioner. Where, however, the collector because of the provisions of the statute and regulations made pursuant thereto makes the credit without specific instructions from the Commissioner, the credit is actually *made* or allowed when the collector so records it, and in such a case subsequent action by the Commissioner in the way of a review of the collector's action would not operate to fix the time when the credit was *made* or allowed, since in such a case the collector had before him the account of the taxpayer and is charged by law and the regulations to enter the credit.

It is held that where the allowance of a credit as provided in section 252 of the Revenue Act of 1918 is being considered by the Commissioner, the credit is made or allowed only when the Commissioner signs and forwards to the collector a formal statement or direction or assessment list showing the amount of the tax to be collected over and above the amount of the credit." (Italics ours.)

And in General Counsel's Memorandum 2455, Cumulative Bulletin VI-2, page 107, it appeared that on September 18, 1926, there was scheduled for refund certain overpayments for the years 1919 and 1920. On September 11, 1926, there was assessed against the taxpayer a deficiency for the taxable year 1918. In order to insure the credit, the Collector was notified to withhold demand for the additional tax for 1918, for comparison with the 1919 and 1920 overassessments. The Collector, on September 22, 1926, accepted a check for the deficiency for 1918, which resulted in an overpayment with respect to the entire 1919 and 1920 overassessments. The question presented was whether the taxpayer was entitled to interest on the overpayments for 1919 and 1920 under the circumstances stated, or whether under the provisions of section 1116(a) of the 1926 Act, the taxpayer was not entitled to inter-

est thereon because of the fact that the Collector was instructed to apply the overpayments against the deficiency for 1918, and the due date of the 1918 tax preceded the overpayments for 1919 and 1920. In order to reach a decision that the taxpayer was not entitled to interest on the 1919 and 1920 overpayments, it was necessary for the Solicitor to hold that the credit was made effective on September 18, 1926, the date upon which he first signed the Schedule of Overassessment, including the overpayments in question, which date preceded by four days the actual payment of the deficiency by the taxpayer. The Solicitor so held, thereby recognizing that the credit was made effective upon the date of the allowance of the credit, considering the allowance and the making effective of the credit as simultaneous.

And Treasury Decision 3260, 5 Cumulative Bulletin, page 243, shows that a credit is made effective when the Collector applies the overpayments against the deficiencies. That Treasury Decision states in part, page 244:

> "Upon completion and certification of a schedule, *the collector of internal revenue shall credit* the accounts with the amounts abated and credited and make proper notations of the refunds. The proper Account 6 will be credited, and Account 18 will be debited with the total amount abated and *applied as credits for the reduction of tax liability*. Account 9(e) will be debited with the total amount applied as credits from items in Account 9(e). The procedure, as outlined in section 583 of the Internal Revenue Manual, in cases of this nature should be carefully followed." (Italics ours.)

In view of this uniform practice in the Treasury Department as to when a credit is made, we submit that the present contention of the Government as to when the credit is taken, which the courts hold is when it is made effective, is a dying grasp at the last straw in order to save to the Government interest on credits which clearly were made effective, within the meaning of the statute, before the Revenue Act of 1926 went into effect.

If this court should hold that the credit in question was made

effective prior to the passage of the 1926 Act, we submit that it is an inescapable conclusion that the credit was *taken* before the passage of that Act. And, if the credit was taken while the Revenue Act of 1924 was in effect, the interest on the credit should be computed under the provisions of that Act. *Blair* v. *United States ex rel Birkenstock*, 271 U. S. 348; *United States* v. *Magnolia Petroleum Company*, 276 U. S. 160.

The Government in its brief filed in this proceeding in the lower Court, made reference to the successive revenue acts relating to interest on refunds and credits in an endeavor to determine the intent of Congress in the use of the words "credit taken." It pointed out that under the 1924 Act interest was paid by the Government on a credit of an overpayment prior to 1921 against a deficiency for another year, the interest to be computed from the date of the overpayment to the date of the assessment of the deficiency, but that under the provisions of that Act the Government could collect no interest on deficiencies found for years prior to 1921. It referred to a conference report on the Revenue Bill of 1926, H. R. report 356, which reads:

> "The house bill reenacted without change the existing law relating to payment of interest on refunds and credits. Under existing law in the case of a credit taken against an additional assessment the taxpayer is allowed interest from the date of his overpayment to the date of the additional assessment. In the case of taxes imposed by acts prior to the Act of 1921, the taxpayer (except as provided in Section 283 of this bill) pays no interest in the case of underpayment up to the date of assessment. Consequently it frequently happened that the taxpayer who owes the Government money upon which he is paying no interest is collecting interest upon money which the Government owes him. This amendment remedies this situation by allowing interest in the case of a credit under an act prior to the Revenue Act of 1921, only to the date on which the original tax against which the credit is taken was due. In the case of refunds interest is allowed 'to the date of the allowance of the refund.' In practice the Commissioner first signs the Schedule of Overassessments, which is sent to the Collector, in order

> to determine whether the overpayments should be credited or refunded. This amendment proposes to fix as the date upon which the refund is allowed the date on which the Commissioner signs the Schedule of Overassessments; and the House recedes."

The Government then argued that it was apparent that Congress by the adoption of this conference report intended to correct an abuse by attempting to provide that where an overassessment of a tax is taken as a credit against a tax imposed by an Act prior to the 1921 Act, interest was to be computed "only to the date on which the original tax against which the credit is taken was due"; that Section 1116 of the 1926 Act must be interpreted in the light of the then situation and the results sought to be accomplished. The Government contended that the interest provisions of the laws in effect prior to the 1926 Act operated so unequitably against the Government that the provisions of Section 1116 of the 1926 Act were inserted to remedy what the Government claimed was an unequitable situation; and that because the terms of Section 1116(c) are retroactive with respect to refunds and credits allowed before but paid and taken after the 1926 Act went into effect, it was intended to apply to all undisposed cases involving the computation of interest on credits.

It is a fact that for some time prior to the enactment of the 1926 Act the Treasury Department held up the computation of interest on credits and refunds which had been allowed, in the expectancy that the provisions of the 1926 Act would be more liberal to the Government concerning the payment of interest. Section 1116 of that Act was clearly Treasury legislation. We submit that it is absurd for the Government to argue that it was the intention of Congress that Section 1116 should apply to all undisposed of interest cases at the time the 1926 Act was passed, and submit that the manifest intention was that "credit taken" means "the date on which the credit became effective," which is the meaning given to those words by the unanimous decisions of the lower Courts. In other words, the plain intention of Congress was that in those cases

where credit had not been made effective prior to the passage of the 1926 Act, interest should be computed under the provisions of that Act, but that in those cases where the credit had been made effective prior to the 1926 Act, interest should be computed under the Revenue Act of 1924. Therefore, irrespective of what the Government may argue as the intention of Congress by the general situation covering the payment of interest prior to the passage of the 1926 Act, the issue in all of these cases is simply when the credit in question became effective under the provisions of the statute, as they had uniformly been interpreted and put in practice by the Government.

This Court certainly would not give consideration in the interpretation of the statute, to any equitable argument advanced by the Government that the Government was required to pay more interest under one Act than under another. The matter of remedying what the Government alleges was an unequitable situation, was for the legislature and not for the courts. The difference in the payment of interest under the provisions of the two Acts has no bearing whatever upon the question of when the credit was made effective. There existed many factors which Congress undoubtedly considered in not exacting interest on deficiencies, for years prior to 1921, under the 1924 Act, whereas it allowed interest on refunds and credits for those years. The war years and the years immediately following found the Government clearly overburdened in auditing tax returns, and in many instances taxpayer's returns for the years 1918 to 1920, inclusive, were not finally audited until many years later. In fact, there are cases in which the tax liability of taxpayers for those years have not yet been finally determined. It would have been manifestly unjust for Congress to exact interest on deficiencies under such circumstances. Also, the Revenue laws subject a taxpayer to very substantial penalties in cases of delinquencies, whereas the Government was not subjected to such penalties in case it was delinquent in finding overpayments in favor of the taxpayer. It is obvious, therefore, that this court should not attribute any importance to the Government's argument per-

taining to what it alleged was an unequitable situation under the interest provisions of the 1924 Act.

CONCLUSION.

In conclusion, we submit that under the facts in this case, considered in conjunction with the Treasury Department procedure in cases involving credits and the differences between those cases and the refund cases, and the various authorities heretofore cited, the credit of the 1918 overpayment against the 1916 and 1917 deficiencies was taken and made effective, within the meaning of the statute, prior to the date upon which the 1926 Act became effective, to wit, February 26, 1926.

Respectfully submitted,

PAUL F. MYERS,
JOHN R. YATES,
Attorneys for Petitioner.

APPENDIX.

1. Schedule of Overassessments (Form 7805).
2. Schedule of Refunds and Credits (Form 7805-A).

TREASURY DEPARTMENT
U. S. INTERNAL REVENUE SERVICE
Form 7805
Form approved by Comptroller General
Feb. 5, 1923

IMMEDIATE

This schedule must be executed and all required steps taken without delay.

COMMISSIONER OF INTERNAL REVENUE.

SCHEDULE OF OVERASSESSME

AND

ALLOWANCE OF ABATEMENTS, CREDITS, REFUNDS, AND RELATED C

INCOME TAX UNIT

CERTIFICATE OF DEPUTY COMMISSIONER

Commissioner of Internal Revenue:

The returns of the taxpayers listed herein, together with their claims (if any) and appropriate supporting evidence, have been carefully examined and the tax liability of the respective taxpayers has been determined in accordance with the available facts and the law. The overassessments or reductions in tax liability appearing in column 4 are accordingly recommended for allowance.

Date JAN. 29 1926

-SIGNED- C. R. NASH

ASSISTANT TO THE [illegible] Commissioner.

AUTHORIZATION OF COMMISSIONER

To the Collector 1ST *District of* PENNSYLVANIA

The amounts listed in column 4 as overassessments (or reductions of tax liability) are hereby approve.., and the related claims, if any, allowed in the ... of Overassessment" or "Notices of Adjustment of Claim for Abatement" attached thereto.

You will immediately check such items against the accounts of the several taxpayers, and determine whether the amounts in which the tax liabilities ha... whole or in part, and make such abatements as may be warranted by the condition of the taxpayers' accounts for the years involved.

If any part of any such item is found to be an overpayment, you will examine all accounts of the taxpayer for other periods and apply the overpayment ... the appropriate entries in your accounts. (This applies only to income, war profits, and excess profits taxes.) Such credits will be entered in column 9, and ... Re... and Credits (Form 7805-A).

The balance, if any, of the overpayment will be entered in column 12, and placed in column 4 of the subsidiary schedule (Form 7805-A) referred to ab... the taxpayer's account.

You will thereupon complete and certify this schedule and the schedule upon Form 7805-A, and return the necessary copies of each to the Commissioner ...

Date JAN. 29 1926

-SIGNED- D. ...

Item No. (1)	Certificate of Overassessment or Claim Number (2)	Name of Taxpayer (3)	Overassessments or Reductions of Tax Liability (Amount) (4)	List, Page and Line, or Account Number (5)	Taxable Year. (6)	Abatement (Amount) (7)	Overpay... (Amount) (8)
X	X X	TOTALS OF 60 ITEMS IN THIS SCHEDULE		X X X	X		
	X X	X X X	X X		X X		X X
23	875102	POTTSTOWN IRON CO.	250871 34		18		25087...
24	875103	POTTSTOWN IRON CO.	765 61		19		76...
25	875101	POTTSTOWN IRON CO.	4130 87		20		413...
	X X	X X X	X X		X X		X ...

SCHEDULE OF OVERASSESSMENTS

AND

ALLOWANCE OF ABATEMENTS, CREDITS, REFUNDS, AND RELATED CLAIMS, IF ANY

~~ORIGINAL~~

~~Voucher to General Accounting Office~~

IT-A-17941

Schedule No. .....

Sheet 1 of ..... *sheets*

INCOME TAX UNIT

FIRST *District of* PENNSYLVANIA

AUTHORIZATION OF COMMISSIONER

I ~~PENNSYLVANIA~~

ions of tax liability) are hereby approved, and the related claims, if any, allowed in the respective amounts indicated by the "Certificates ed" attached thereto.

the several taxpayers, and determine whether the amounts in which the tax liabilities have been reduced should be respectively abated, in the condition of the taxpayers' accounts for the years involved.

ou will examine all accounts of the taxpayer for other periods and apply the overpayment as a credit against the taxes due, if any, making s, war profits, and excess profits taxes.) Such credits will be entered in column 9, and placed in column 5 of a subsidiary Schedule of mn 12, and placed in column 4 of the subsidiary schedule (Form 7805-A) referred to above, and an appropriate *memorandum* made upon hedule upon Form 7805-A, and return the necessary copies of each to the Commissioner of Internal Revenue.

-SIGNED- D. H. BLAIR

Commissioner of Internal Revenue.

CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items in this schedule have been checked against the accounts of the respective taxpayers concerned and the amounts indicated have been applied as abatements and credits on their accounts.

The amounts of overpayment and the net amounts refundable have been determined to be as indicated herein.

Date 2-27-26

-SIGNED- B. D. MC CAUGHN

Collector 1ST *District of* PA.

ACCOUNTS UNIT

Noted and entered

INITIALS	DATE

List, Page and Line, or Account Number (5)	Taxable Year (6)	(Entries to be made by the Collector) Abatement (Amount) (7)	Overpayment (Amount) (8)	Credit (Amount carried to Form 7805-A) (9)	Account Credited; List, Page, and Line (10)	Due Date of Items Against Which Credit Was Made (11)	Net Amount Refundable Carried to Form 7805-A (12)	Remarks (13)
X X X	X				X X X	X X		X X
	X X		X X	X X	X X	1-22-26	X X	X X
	18		250871 34	227035 93 2683 29	JAN.1926.04¢ SPL.12 JAN.1926.03¢ SPL.12	1-29-26	21152 12	0 A
						22		
	19		765 61				765 61	0 A
	20		4130 87				4130 87	0 A
	X X		X X	X X	X X		X X	X X

TREASURY DEPARTMENT
U. S. INTERNAL REVENUE SERVICE
Form 7805-A
Form approved by Comptroller General
Feb. 5, 1923

IMMEDIATE
This schedule must be executed and all required steps taken without delay.
COMMISSIONER OF INTERNAL REVENUE.

SCHEDULE OF REFUNDS AND CREDITS

ILLEGAL OR ERRONEOUS COLLECTIONS

INCOME TAX UNIT

CERTIFICATE OF COLLECTOR

To the Commissioner of Internal Revenue:

The items hereon are listed as they appeared for refund or credit on an original schedule (bearing the same number) of overassessments and related claims, if any, heretofore approved and allowed by the Commissioner of Internal Revenue. An examination of the accounts of the several taxpayers named disclosed such items to be the portions of such previously allowed overassessments or reductions of tax liability subject to refund or credit.

Date 2-27-26

-SIGNED- B. D. MC CAUGHN
Collector, 1ST *District of* PENN.

CERTIFICATE OF DEPUTY COMMISSIONER

Commissioner of Internal Revenue:

The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due

Date APR. 15 1926

-SIGNED- C. B. ALLEN
ACTING *Deputy Commissioner.*

To the Disb
The item
able portions
est, if any, li
be made in t
Date APR

Item No. (1)	Certificate of Overassessment or Claim Number (2)	Name and Address of Taxpayer (3)	Net Amount Refundable (4)	Amount Credited (5)	(Not to be used by Collector) Interest Accrued (6)	(Not to be used by Collector) Total Refundable (7)	Date of Final Payments of Accounts from which Credits were Transferred and Overpayments Found (8)
X	X X	TOTALS OF ..... ITEMS IN THIS SCHEDULE					X X
	X X	X X X	X X	X X	X X		X X
23	875102	POTTSTOWN IRON CO.	21152 12	2683 29	8417 67		12-15-1
23	875102	POTTSTOWN IRON CO. ADDITIONAL ASSESSMENTS LIST DATED 1-15-26		227035 93			12-15-1
24	875103	POTTSTOWN IRON CO.	765 61		269 98		3-13-20
25	875101	POTTSTOWN IRON CO.	4130 87		1137 46		12-9-21
	X X	X X X	X X	X X	X X		X X

SCHEDULE OF REFUNDS AND CREDITS

~~ORIGINAL~~
~~Voucher to General Accounting Office~~

Schedule No. IT-R-17941

Sheet 1 of ..... Sheets.

1ST Dist. of PENNSYLVANIA

D. C. Voucher No. .....

UNIT	NOTATIONS	DATE

ILLEGAL OR ERRONEOUS COLLECTIONS

INCOME TAX UNIT

CERTIFICATE OF DEPUTY COMMISSIONER

Commissioner of Internal Revenue:

The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due

Date APR. 15 1926

-SIGNED- C. B. ALLEN

ACTING *Deputy Commissioner.*

AUTHORIZATION OF COMMISSIONER

To the Disbursing Clerk, Treasury Department:

The items listed in column 4 hereof have been found to be the refundable portions of overassessments heretofore allowed, and the accrued interest, if any, listed in column 6 has been found due Payment may, therefore, be made in the amounts shown in column 7.

Date ~~APR. 15 1926~~

Commissioner of Internal Revenue.

Amount Credited (5)	(Not to be used by Collector) Interest Accrued (6)	(Not to be used by Collector) Total Refundable (7)	Date of Final Payments of Accounts from which Credits were Transferred and Overpayments Found (8)	(Not to be used by Collector) Refunding Taxes Illegally Collected 1927 and Prior Years (9)	19____ (10)	19____ (11)	Paid by Disbursing Clerk, Treas. Dept., by Checks Dated ____, 19____ Numbered as Follows: (12)	Remarks (13)
			X X				X X	X X
X X	X X		X X	X X				
2683 29	8417 67		12-15-19	29569 79				
227035 93			12-15-19					
	269 98		3-13-20	1035 59				
	1137 46		12-9-21	5268 33				
X X	X X		X X	X X				